

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIGFREDO CABRERA, ENKO
TELAHUN, and CHRISTINE MCNEELY,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

CVS RX SERVICES, INC., a New York
corporation, CVS PHARMACY, INC., a
Rhode Island corporation, GARFIELD
BEACH CVS, LLC, a California limited
liability company, and DOES 1 to 10
inclusive,

Defendants.

No. C 17-05803 WHA

**ORDER RE MOTION FOR
ENTRY OF JUDGMENT**

INTRODUCTION

In this wage-and-hour putative class action, plaintiffs move for entry of partial judgment pursuant to FRCP 54(b). For the reasons below, the motion is **GRANTED**.

STATEMENT

Defendants CVS Rx Services, Inc., CVS Pharmacy, Inc., and Garfield Beach CVS, LLC provide pharmacy services and operate retail stores. CVS employed plaintiff Enko Telahun as a pharmacist and pharmacy manager between June 2013 and February 2017 and employed Sigfredo Cabrera as a pharmacy tech trainee from January 2016 through January 2017 (Dkt. No. 68-2 ¶¶ 3–6).

1 Cabrera initiated this action in August 2017 in state court. He amended the complaint in
2 September 2017 to add Telahun as a plaintiff and to include a claim pursuant to California's
3 Private Attorneys General Act of 2004. In October 2017, CVS removed the action to our district
4 court and later moved to compel plaintiffs to bring their claims in individual arbitration. In the
5 face of CVS's motions to compel, plaintiffs moved for leave to file a second amended complaint.
6 The proposed second amended complaint dropped all of Cabrera and Telahun's putative class
7 claims (keeping only their PAGA claim) and added Christine McNeely as a plaintiff and putative
8 class representative with respect to the non-PAGA claims (Dkt. Nos. 1, 18–20).

9 A September 2018 order granted CVS's motion for summary judgment on plaintiffs'
10 PAGA claim, finding that Cabrera and Telahun had waived their individual claims under the
11 Labor Code and had lost standing to sue under PAGA. Plaintiffs now move for entry of
12 judgment on their PAGA claim pursuant to FRCP 54(b) (Dkt. Nos. 86, 93). This order follows
13 full briefing. Due to the unavailability of counsel, an order vacated the hearing on the instant
14 motion and deemed the matter submitted on the papers.

15 ANALYSIS

16 FRCP 54(b) provides that a district court may enter final judgment on individual claims
17 in multiple claim actions upon an express determination that there is no just reason for delay.
18 There is a two-step test to determine whether there is a just reason for delay.
19 *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 954 (9th Cir. 2006). *First*, the
20 court must assess the judicial administrative interests at stake, including factors such as “the
21 interrelationship of the claims so as to prevent piecemeal appeals in cases which should be
22 reviewed only as single units.” *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 10
23 (1980). *Second*, the court must weigh the equities involved. *AmerisourceBergen Corp.*, 465
24 F.3d at 954.

25 Here, there is no just reason for delaying entry of a final judgment on Cabrera and
26 Telahun's PAGA claim. The September 25 order granted summary judgment on the PAGA
27 claim in favor of CVS — thereby resolving all of the claims asserted by Cabrera and Tehlahun in
28 this action — and held that because Cabrera and Telahun had given up their rights for individual

1 damages under the Labor Code they had lost standing to sue under PAGA. The only remaining
2 claims are those asserted by plaintiff McNeeley (which claims remain stayed pending CVS's
3 appeal of the March 16 order granting plaintiffs' motion for leave to amend and granting in part
4 CVS's motion to compel arbitration). Appeal of Cabrera and Telahun's PAGA claim will not
5 involve factual questions at issue in McNeeley's individual claims under the Labor Code.
6 Rather, the appeal will involve whether or not this Court erred as a matter of law by granting
7 summary judgment on Cabrera and Telahun's PAGA claim in favor of CVS. The PAGA claim
8 is therefore sufficiently separate and distinct from the only remaining claims in this action. Nor
9 would delay in entering final judgment serve judicial economy or any other purpose. Plaintiffs'
10 motion for entry of partial judgment pursuant to FRCP 54(b) is accordingly **GRANTED**.

11 CONCLUSION

12 Plaintiffs' motion for entry of partial judgment pursuant to FRCP 54(b) is **GRANTED**.
13 Judgment on the PAGA claim will be entered separately.

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15 **IT IS SO ORDERED.**

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17 Dated: January 2, 2019.


18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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